

EXHIBIT 2

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Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - - - -
IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS
THIS DOCUMENT RELATES TO)
U.S. ex rel. Ven-a-Care of) Judge Patti B. Saris
the Florida Keys, Inc.)
v.) Chief Magistrate
Abbott Laboratories, Inc.,) Judge Marianne B.
No. 06-CV-11337-PBS) Bowler
- - - - -

(cross-captions on following pages)

Washington, D.C.

Tuesday, October 30, 2007

9:00 a.m.

Videotaped deposition of DEIRDRE DUZOR

Volume I

Henderson Legal Services
202-220-4158

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<p>1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA 2 THIRD JUDICIAL DISTRICT AT ANCHORAGE 3 ----- 4 STATE OF ALASKA,) 5 Plaintiff,) 6 vs.) Case No. 7 ABBOTT LABORATORIES and) 3AN-06-12297 CI 8 DEY, INC.,) 9 Defendants.) 10 ----- 11 12 13 IN THE CIRCUIT COURT OF 14 MONTGOMERY COUNTY, ALABAMA 15 ----- 16 STATE OF ALABAMA,) 17 Plaintiff,) 18 vs.) Case No. CV-2005-219 19 ABBOTT LABORATORIES, INC.,) Judge Charles Price 20 et al.,) 21 Defendants.) 22 -----</p>	<p>1 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS 2 COUNTY DEPARTMENT, CHANCERY DIVISION 3 ----- 4 THE PEOPLE OF THE STATE OF) 5 ILLINOIS,) 6 Plaintiff,) Case No. 05 CH 02474 7 vs.) 8 ABBOTT LABORATORIES, et al.,) 9 Defendants.) 10 ----- 11 12 13 COMMONWEALTH OF KENTUCKY 14 FRANKLIN CIRCUIT COURT - DIV. II 15 ----- 16 COMMONWEALTH OF KENTUCKY,) 17 Plaintiff,) Civil Action 18 vs.) NO. 03-CI-1134 19 ABBOTT LABORATORIES, INC., et al.,) 20 Defendants.) 21 ----- 22</p>
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<p>1 IN THE CIRCUIT COURT OF THE FIRST CIRCUIT 2 STATE OF HAWAII 3 ----- 4 STATE OF HAWAII,) 5 Plaintiff,) Case No. 6 vs.) 06-1-0720-04 EEH 7 ABBOTT LABORATORIES, INC.,) 8 et al.,) JUDGE EDEN 9 Defendants.) ELIZABETH HIFO 10 ----- 11 12 13 IN THE FOURTH JUDICIAL DISTRICT OF THE STATE OF 14 IDAHO, IN AND FOR THE COUNTY OF ADA 15 ----- 16 STATE OF IDAHO,) 17 Plaintiff,) 18 vs.) Case No. CV OC 0701846 19 ABBOTT LABORATORIES,) 20 Defendant.) 21 ----- 22</p>	<p>1 IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI 2 FIRST JUDICIAL DISTRICT 3 ----- 4 STATE OF MISSISSIPPI,) 5 Plaintiff,) 6 vs.) Civil Action No. 7 ABBOTT LABORATORIES, INC.,) G2005-2021 8 et al.,) 9 Defendants.) 10 ----- 11 12 13 STATE OF NEW YORK 14 SUPREME COURT: COUNTY OF ERIE 15 ----- 16 COUNTY OF ERIE,) 17 Plaintiff,) 18 vs.) Index No. 05-2439 19 ABBOTT LABORATORIES, INC.,) 20 et al.,) 21 Defendants.) 22 -----</p>

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<p style="text-align: right;">Page 6</p> <p>1 STATE OF NEW YORK 2 SUPREME COURT: COUNTY OF OSWEGO 3 ----- 4 COUNTY OF OSWEGO,) 5 Plaintiff,) 6 vs.) Index No. 06-0697 7 ABBOTT LABORATORIES, INC.,) 8 et al.,) 9 Defendants.) 10 ----- 11 12 13 STATE OF NEW YORK 14 SUPREME COURT: COUNTY OF SCHENECTADY 15 ----- 16 COUNTY OF SCHENECTADY,) 17 Plaintiff,) 18 vs.) Index No. 06-0886 19 ABBOTT LABORATORIES, INC.,) 20 et al.,) 21 Defendants.) 22 -----</p>	<p style="text-align: right;">Page 8</p> <p>1 IN THE COMMONWEALTH COURT OF PENNSYLVANIA 2 ----- 3 COMMONWEALTH OF PENNSYLVANIA) 4 by Thomas W. Corbett, Jr. in) 5 his capacity as Attorney) 6 General of the Commonwealth) 7 of Pennsylvania,) 8 Plaintiff,) 9 vs.) No. 212 M.D. 2004 10 TAP PHARMACEUTICAL PRODUCTS,) 11 INC., et al.,) 12 Defendants.) 13 ----- 14 15 16 17 18 19 20 21 22</p>
<p style="text-align: right;">Page 7</p> <p>1 UNITED STATES DISTRICT COURT FOR THE 2 SOUTHERN DISTRICT OF OHIO 3 WESTERN DIVISION 4 ----- 5 STATE OF OHIO,) 6 Plaintiff,) Civil Action No. 7 vs.) 1:06-cv-00676-SSB-TSB 8 DEY, INC., et al.,) 9 Defendants.) 10 ----- 11 12 13 STATE OF WISCONSIN CIRCUIT COURT 14 DANE COUNTY 15 ----- 16 STATE OF WISCONSIN,) 17 Plaintiff,) 18 vs.) Case No. 04-CV-1709 19 AMGEN INC., et al.,) 20 Defendants.) 21 ----- 22</p>	<p style="text-align: right;">Page 9</p> <p>1 IN THE COURT OF COMMON PLEAS 2 FIFTH JUDICIAL CIRCUIT 3 ----- 4 STATE OF SOUTH CAROLINA, and) STATE OF 5 HENRY D. McMASTER, in his) SOUTH CAROLINA 6 official capacity as Attorney) COUNTY OF 7 General for the State of South) RICHLAND 8 Carolina,) 9 Plaintiffs,) 10 vs.) Civil Action No. 11 ABBOTT LABORATORIES, INC.,) 2006-CP-40-4394 12 Defendants.) 13 ----- 14 15 16 17 18 19 20 21 22</p>

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Page 10	Page 12
<p>1 2 3 4 Washington, D.C. 5 Tuesday, October 30, 2007 6 9:00 a.m. 7 8 Videotaped deposition of DEIRDRE DUZOR, called 9 for examination by counsel for Abbott Laboratories 10 in the above-entitled matter, taken at the law 11 offices of Jones Day, 51 Louisiana Avenue, N.W., 12 Washington, D.C. 20001-2113, the proceedings being 13 recorded stenographically by Jonathan Wonnell, a 14 Registered Professional Court Reporter and Notary 15 Public of the District of Columbia, and transcribed 16 under his direction. 17 18 19 20 21 22</p>	<p>1 APPEARANCES (Cont'd) 2 3 On behalf of the U.S. Department of Health and 4 Human Services: 5 BRIAN A. KELLEY, ESQ. 6 U.S. Department of Health & Human 7 Services 8 Office of General Counsel, CMS Division 9 330 Independence Avenue, S.W., Room 5345 10 Washington, D.C. 20201 11 (202) 205-8702 12 13 On behalf of the State of Alabama: 14 ROGER L. BATES, ESQ. 15 Hand Arendall LLC 16 1200 Park Place Tower 17 2001 Park Place North 18 Birmingham, Alabama 35203 19 (205) 324-4400 20 rbates@handarendall.com 21 22</p>
Page 11	Page 13
<p>1 APPEARANCES OF COUNSEL 2 3 On behalf of the United States of America: 4 ANA MARIA MARTINEZ, ESQ. 5 United States Department of Justice 6 99 N.E. 4th Street 7 Miami, Florida 33132 8 (305) 961-9431 9 ana.maria.martinez@usdoj.gov 10 -- and -- 11 JOHN NEAL, ESQ. 12 U.S. Department of Justice 13 Civil Division 14 P.O. Box 261, Ben Franklin Station 15 Washington, D.C. 20044 16 (202) 305-9300 17 18 19 20 21 22</p>	<p>1 APPEARANCES (Cont'd) 2 3 On behalf of the State of California: 4 RITA HANSCOM, ESQ. (via phone) 5 California Attorney General's Office 6 Civil Prosecutions Unit 7 P.O. Box 85266 8 110 West A Street, #1100 9 San Diego, California 82186 10 (619) 688-6099 11 rita.hanscom@doj.ca.gov 12 13 On behalf of the State of Florida: 14 MARY S. MILLER, ESQ. (via phone) 15 Office of the Attorney General of Florida 16 PL-01, The Capitol 17 Tallahassee, Florida 32399-1050 18 (850) 414-3600 19 mary_miller@oag.state.fl.us 20 21 22</p>

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<p>1 APPEARANCES (Cont'd)</p> <p>2 On behalf of the City of New York and all New</p> <p>3 York Counties other than Nassau and</p> <p>4 Orange; the States of Wisconsin,</p> <p>5 Illinois, Kentucky, Idaho, Alaska,</p> <p>6 Hawaii, South Carolina and Mississippi:</p> <p>7 MICHAEL WINGET-HERNANDEZ, ESQ.</p> <p>8 Winget-Hernandez, LLC</p> <p>9 3112 Windsor Road, Suite 228</p> <p>10 Austin, Texas 78703</p> <p>11 michael@winget-hernandez.com</p> <p>12</p> <p>13 On behalf of Ven-A-Care of the Florida Keys,</p> <p>14 Inc.:</p> <p>15 ROSLYN G. POLLACK, ESQ.</p> <p>16 Berger & Montague P.C.</p> <p>17 1622 Locust Street</p> <p>18 Philadelphia, Pennsylvania 19103-6305</p> <p>19 (215) 875-3000</p> <p>20 rpollack@bm.net</p> <p>21</p> <p>22</p>	<p>1 APPEARANCES (Cont'd)</p> <p>2</p> <p>3 On behalf of Dey, Inc., Dey, L.P. and Mylan:</p> <p>4 NEIL MERKL, ESQ.</p> <p>5 Kelley, Drye & Warren LLP</p> <p>6 101 Park Avenue</p> <p>7 New York, New York 10178</p> <p>8 (212) 808-7811</p> <p>9 nmerkl@kelleydrye.com</p> <p>10</p> <p>11 On behalf of Roxane Laboratories and</p> <p>12 Boehringer Ingelheim:</p> <p>13 ERIC GORTNER, ESQ.</p> <p>14 Kirkland & Ellis</p> <p>15 200 East Randolph Drive</p> <p>16 Chicago, Illinois 60601</p> <p>17 (312) 861-2285</p> <p>18 egortner@kirkland.com</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
Page 15	Page 17
<p>1 APPEARANCES (Cont'd)</p> <p>2</p> <p>3 On behalf of Abbott Laboratories, Inc.:</p> <p>4 DAVID TORBORG, ESQ.</p> <p>5 SEAN P. MALONE, ESQ.</p> <p>6 Jones Day</p> <p>7 51 Louisiana Avenue, N.W.</p> <p>8 Washington, D.C. 20001-2113</p> <p>9 (202) 879-3939</p> <p>10 dstorborg@jonesday.com</p> <p>11 spmalone@jonesday.com</p> <p>12</p> <p>13 On behalf of Brisol-Myers Squibb:</p> <p>14 EVA L. DIETZ, ESQ. (via phone)</p> <p>15 Hogan & Hartson</p> <p>16 875 Third Avenue</p> <p>17 New York, New York 10022</p> <p>18 eldietz@hhlaw.com</p> <p>19 (212) 918-3542</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 APPEARANCES (Cont'd)</p> <p>2</p> <p>3 On behalf of Schering-Plough Corporation,</p> <p>4 Schering Corporation and Warrick</p> <p>5 Pharmaceuticals Corporation:</p> <p>6 GINGER APPLEBERRY, ESQ. (via phone)</p> <p>7 Locke, Liddell & Sapp</p> <p>8 2200 Ross Avenue, Suite 2200</p> <p>9 Dallas, Texas 75201</p> <p>10 (214) 740-8459</p> <p>11 gappleberry@lockeliddell.com</p> <p>12</p> <p>13 On behalf of Baxter Health Care and Baxter</p> <p>14 International:</p> <p>15 JARED D. RODRIGUES, ESQ. (via phone)</p> <p>16 Dickstein Shapiro LLP</p> <p>17 1825 Eye Street, N.W.</p> <p>18 Washington, D.C. 20006</p> <p>19 (202) 420-2571</p> <p>20 hearde@dicksteinshapiro.com</p> <p>21</p> <p>22</p>

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1	APPEARANCES (Cont'd)	1	INDEX OF EXHIBITS (Cont'd)
2	ALSO PRESENT:	2	NO. DESCRIPTION PAGE
3	CONWAY BARKER, Videographer	3	Exhibit Abbott 380, HHD086-0016 to 0019 242
4		4	Exhibit Abbott 381, Report by ADT Associates 243
5		5	dated 8/30/04 entitled Medicaid and
6		6	Medicare Drug Pricing Strategy to
7		7	Determine Market Prices (No Bates refs)
8		8	
9		9	
10		10	
11		11	
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20		20	
21		21	
22		22	
Page 19		Page 21	
1	INDEX OF EXAMINATIONS	1	PROCEEDINGS
2	WITNESS NAME PAGE	2	(8:58 a.m.)
3	DEIRDRE DUZOR	3	(Exhibit Abbott 367 was
4	By Mr. Torborg: 26	4	marked for
5		5	identification.)
6	INDEX OF EXHIBITS	6	THE VIDEOGRAPHER: In the United States
7	NO. DESCRIPTION PAGE	7	District Court for the District of Massachusetts In
8	Exhibit Abbott 367, Resume of Deirdre Duzor (No Bates refs) 21	8	Re: Pharmaceutical Industry Average Wholesale Price
9		9	Litigation, this document relates to Ven-A-Care of
10	Exhibit Abbott 368, HHD086-0013 to 0015 113	10	the Florida Keys Incorporated versus Abbott
11	Exhibit Abbott 369, HHD068-0403 126	11	Laboratories Incorporated et al., Case Number
12	Exhibit Abbott 370, HHC004-0222 159	12	06-CV-11337 PBS and other cases that are cross
13	Exhibit Abbott 371, HHD086-0001 168	13	noticed.
14	Exhibit Abbott 372, Rehnquist letter to Scully 174	14	This is the deposition of Deirdra Duzor.
15	stamped 9/12/02 (No Bates refs)	15	Today's date is October 30th 2007. The location of
16	Exhibit Abbott 373, HHC009-0976 209	16	the deposition is Jones Day, 51 Louisiana Avenue,
17	Exhibit Abbott 374, HHC020-1199 to 1202 214	17	Northwest, Washington, D.C. Will counsel please
18	Exhibit Abbott 375, HHC020-1194 to 1198 214	18	identify yourselves and state whom you represent?
19	Exhibit Abbott 376, HHC018-0016 215	19	MR. TORBORG: David Torborg and also with
20	Exhibit Abbott 377, HHC009-1574 to 1584 224	20	me today is Sean Malone, though he has left the room
21	Exhibit Abbott 378, HHC009-1567 to 1570 224	21	for a second, with Jones Day on behalf of Abbott
22	Exhibit Abbott 379, HHC014-0772 to 0790 226	22	Laboratories.

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<p style="text-align: right;">Page 22</p> <p>1 MR. GORTNER: Good morning. Eric Gortner 2 from Kirkland & Ellis for Roxane Laboratories and 3 certain entities affiliated with Boehringer 4 Ingelheim Corporation. 5 MR. MERKL: Neil Merkl for the Dey 6 companies. 7 MS. POLLACK: Roslyn Pollack representing 8 Ven-A-Care of the Florida Keys. 9 MR. WINGET-HERNANDEZ: Michael 10 Winget-Hernandez. I'm here on behalf of the City of 11 New York and the New York Counties in MDL 1456 other 12 than Nassau and Orange. Also on behalf of the 13 states of Wisconsin, Illinois, Kentucky, Idaho, 14 Alaska, Hawaii, South Carolina and Mississippi. 15 I'd like to note for the record that 16 while Abbott noticed the Kirby McInerney plaintiffs 17 for this deposition and we're pleased to appear and 18 participate in it, we cannot and will not agree to 19 close the deposition on today's testimony. Given 20 the procedural posture of the cases on behalf of the 21 City of New York and the New York Counties, we have 22 yet to receive full discovery from Abbott and</p>	<p style="text-align: right;">Page 24</p> <p>1 State of Florida in the cross noticed matter for the 2 State of Florida. 3 MS. HANSCOM: Good morning. This is Rita 4 Hanscom at California attorney general's office. 5 MR. RODRIGUES: Jared Rodriguez, 6 Dickstein Shapiro for Baxter Health Care. 7 (Mr. Kelley entered the deposition room.) 8 THE VIDEOGRAPHER: Would you like to 9 introduce yourself? 10 MR. KELLEY: And Brian Kelley from the 11 Department of Health and Human Services. 12 THE VIDEOGRAPHER: The court reporter is 13 Jon Wonnell. The video camera operator is Conway 14 Barker both on behalf of Henderson Legal Services. 15 This deposition commences at 9:16:04. Please swear 16 in the witness. 17 * * * * * 18 Whereupon, 19 DEIRDRE DUZOR, 20 called as a Witness, was duly sworn by 21 Jonathan Wonnell, a Notary Public in and 22 for the District of Columbia, and was</p>
<p style="text-align: right;">Page 23</p> <p>1 therefore reserve our right to recall this witness 2 at the appropriate time after such production by 3 Abbott has been made to us. 4 MR. NEAL: John Neal with the Department 5 of Justice on behalf of the United States. 6 MS. MARTINEZ: Ani Martinez on behalf of 7 the United States. And before we begin I'd just 8 like to make a little statement regarding state 9 cross notices. 10 MR. TORBORG: Do you want to have 11 everyone introduce themselves and then we can do 12 that? 13 MS. MARTINEZ: Sure. Let's go ahead. 14 THE VIDEOGRAPHER: Those on the phone, 15 could you introduce yourselves, please? 16 MS. DIETZ: This is Eva Dietz at Hogan & 17 Hartson on behalf of BMS. 18 MS. APPLEBERRY: Ginger Appleberry, 19 Locke, Lord, Bissell & Liddell, on behalf of 20 Schering Plough Corporation and Warrick 21 Pharmaceuticals. 22 MS. MILLER: Mary Miller on behalf of the</p>	<p style="text-align: right;">Page 25</p> <p>1 examined and testified as follows. 2 * * * * * 3 MR. TORBORG: Ms. Duzor, before we get 4 started I think Ms. Martinez wanted to make a 5 statement on the record regarding state cross 6 notices. 7 MS. MARTINEZ: Yes. On behalf of the 8 United States I just wanted to state to any party 9 who was cross noticing this deposition in a state 10 court case that is not in front of Judge Saris in 11 Federal Court that in accordance with Judge Saris' 12 case management orders in the multi-district 13 litigation we have no objection to you all being 14 here with the understanding that any disputes with 15 respect to discovery et cetera would be resolved in 16 front of Judge Saris under federal rules. 17 We are not offering Ms. Duzor in any 18 state court case which would in any way subject her 19 or the United States to state court jurisdiction. 20 And we're making that objection based on the federal 21 regulations as well as what Judge Saris has 22 contemplated in the multi-district litigation. But</p>

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<p style="text-align: right;">Page 174</p> <p>1 Q. Was it your understanding that WAC was a</p> <p>2 price that represented the actual price that</p> <p>3 wholesalers purchased drugs from manufacturers?</p> <p>4 A. It was my understanding that that was the</p> <p>5 original intent of WAC, not necessarily that that is</p> <p>6 what WAC truly represented at the point that I</p> <p>7 became involved in these issues.</p> <p>8 (Exhibit Abbott 372 was</p> <p>9 marked for</p> <p>10 identification.)</p> <p>11 BY MR. TORBORG:</p> <p>12 Q. For the record, what I've marked as</p> <p>13 Exhibit Abbott 372 is a September 16th 2002 letter</p> <p>14 from Janet Rehnquist to Thomas Scully attaching a</p> <p>15 September 2002 report from OIG entitled Medicaid</p> <p>16 pharmacy additional analysis of the actual</p> <p>17 acquisition cost of prescription drug products.</p> <p>18 If you would take a look at that, Ms.</p> <p>19 Duzor, to the extent necessary to tell me if you</p> <p>20 recall this document.</p> <p>21 A. (Reading.) Yes, I do remember this</p> <p>22 document.</p>	<p style="text-align: right;">Page 176</p> <p>1 that OIG reports relating to Medicaid payment for</p> <p>2 drugs have been shared with states?</p> <p>3 A. Yes.</p> <p>4 MR. TORBORG: What do you think? Should</p> <p>5 we remark this document or keep the original exhibit</p> <p>6 number? I know you guys recalled it at one point</p> <p>7 and then changed your mind. So do you have any</p> <p>8 thoughts of whether we should mark it as a new</p> <p>9 exhibit?</p> <p>10 MS. MARTINEZ: No. I mean, the exhibit</p> <p>11 number --</p> <p>12 MR. TORBORG: 328?</p> <p>13 MS. MARTINEZ: -- does not seem to be an</p> <p>14 issue.</p> <p>15 BY MR. TORBORG:</p> <p>16 Q. Ms. Duzor, I've handed you a copy of what</p> <p>17 we've marked previously as Exhibit Abbott 328, a</p> <p>18 document entitled Review of Medicaid Drug State Plan</p> <p>19 Amendments. I ask you to take some time and look at</p> <p>20 that document.</p> <p>21 A. Okay. (Reading.)</p> <p>22 Q. Ms. Duzor, have you had a chance to look</p>
<p style="text-align: right;">Page 175</p> <p>1 Q. And the first sentence of Ms. Rehnquist's</p> <p>2 letter, the first page of the exhibit, indicates</p> <p>3 that it's a follow-up to the previous work, two</p> <p>4 reports; is that right?</p> <p>5 A. Yes, it does.</p> <p>6 Q. Do you know why it is that OIG did this</p> <p>7 additional report?</p> <p>8 A. Well, in this analysis the IG looked at</p> <p>9 whether drugs -- it separately evaluated drugs for</p> <p>10 which there was a FUL established and those that did</p> <p>11 not have -- multiple drugs without those. So I</p> <p>12 think that was the distinction. They were looking</p> <p>13 at categorizing drugs by whether they have a FUL or</p> <p>14 not.</p> <p>15 Q. Did CMS request that OIG prepare this</p> <p>16 report?</p> <p>17 A. Not to my knowledge.</p> <p>18 Q. Do you know if this report was shared</p> <p>19 with state Medicaid program?</p> <p>20 A. As a fact, no, I don't recall.</p> <p>21 Q. Generally speaking in your time at CMS in</p> <p>22 the division of pharmacy has it been the practice</p>	<p style="text-align: right;">Page 177</p> <p>1 at that document?</p> <p>2 A. Yes, I have.</p> <p>3 Q. Can you tell us what this document is?</p> <p>4 A. This document --</p> <p>5 Q. Let me strike that. Are you familiar</p> <p>6 with this document first?</p> <p>7 A. Yes. I recall the document.</p> <p>8 Q. Can you tell us what it is?</p> <p>9 A. I believe it is a draft of a decision</p> <p>10 memo seeking guidance from policymakers in CMS on</p> <p>11 approaches to reviewing state plan amendments that</p> <p>12 were proposing to revise either the ingredient cost</p> <p>13 payment for drugs or the dispensing fees.</p> <p>14 Q. What is a decision memo?</p> <p>15 A. A decision memo is an issue paper with</p> <p>16 recommendations to take to policy decision makers.</p> <p>17 Options and recommendations generally.</p> <p>18 Q. Who are the policy decision makers to</p> <p>19 which this document would go?</p> <p>20 A. Certainly to Dennis Smith and perhaps</p> <p>21 beyond him. Dennis reports to the administrator.</p> <p>22 So it could be for Dennis or it could be something</p>

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<p style="text-align: right;">Page 178</p> <p>1 that Dennis would send up higher than him for 2 decision.</p> <p>3 Q. Do you know who drafted this document?</p> <p>4 A. I believe it was drafted in the pharmacy 5 team. I believe I had a hand in it. I wasn't the 6 major author. I was still fairly new to the team, I 7 think, when this was done.</p> <p>8 Q. Do you know who the major author was?</p> <p>9 A. I suspect that Larry Reid played a large 10 role in it. But there probably was -- one of the 11 analysts probably was actually the original drafter, 12 and I don't know who that would have been.</p> <p>13 Q. Who would be the most likely in your 14 opinion or guess to have been the person who 15 prepared the first draft of this?</p> <p>16 MS. MARTINEZ: Objection to form.</p> <p>17 A. I just -- I honestly don't know. I don't 18 think it would be fair for me to guess.</p> <p>19 Q. Would Cindy Pelter be someone who it may 20 have been?</p> <p>21 A. It could have been. It's well written 22 and Cindy is a good writer. But that would be my</p>	<p style="text-align: right;">Page 180</p> <p>1 by that. Could you --</p> <p>2 A. Well, I was still new in the division. I 3 did not consider myself at all a subject matter 4 expert at that time. However, I do consider myself 5 to be a good writer and editor. And so I think 6 that's kind of the role I played in this memo.</p> <p>7 Q. And do you know what happened with this 8 decision memo or option paper, as you referred to 9 it?</p> <p>10 A. I believe it went forward and I believe 11 we got some guidance as a result of it.</p> <p>12 Q. What guidance did you receive?</p> <p>13 A. I think in general the approaches that 14 are laid out here we were given the go ahead to 15 apply those as we reviewed the state plans.</p> <p>16 Q. Was -- if you look at the second to the 17 last page of the document there's a space for 18 decision. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Approve, disapprove?</p> <p>21 A. Yes.</p> <p>22 Q. What is that?</p>
<p style="text-align: right;">Page 179</p> <p>1 only clue.</p> <p>2 Q. How about Kim Howell?</p> <p>3 A. It certainly could have been Kim. Kim is 4 knowledgeable in the subject matter.</p> <p>5 Q. How about Sue Gaston?</p> <p>6 A. Possibly Sue also. And I'm not that 7 familiar with her writing. She was not there too 8 long after I came.</p> <p>9 Q. What hand did you have in this draft?</p> <p>10 A. I believe in -- basically in editing and 11 commenting on the draft.</p> <p>12 Q. Do you recall what comments you provided?</p> <p>13 I'm sorry. Were your comments reflected in this 14 particular draft or not?</p> <p>15 A. I don't know. I can't recall enough 16 detail to know that.</p> <p>17 Q. Do you recall what comments you provided 18 generally?</p> <p>19 A. I think the nature of the comments was in 20 terms of editing clarity of the information 21 presented.</p> <p>22 Q. I'm not sure I understand what you mean</p>	<p style="text-align: right;">Page 181</p> <p>1 A. Just as it appears, whoever was 2 determined to be the decision maker for this issue 3 in this type of memo is generally asked to document 4 their decision by signing and dating whether they 5 agree with the recommendations or disagree or want 6 to add something to them.</p> <p>7 Q. Do you know if the options laid out in 8 this document were formally approved via a signature 9 on documents similar to this?</p> <p>10 A. I believe we did get a signature on the 11 final document. Whether that document was altered 12 from this one, I don't know.</p> <p>13 Q. What makes you believe that?</p> <p>14 A. That we did get a decision?</p> <p>15 Q. Mm-hmm.</p> <p>16 A. Because we felt that we needed some 17 guidance and I just remember that we did get some as 18 a result of sending forward -- sending the issue 19 forward with some options as to how to review the 20 state plans.</p> <p>21 Q. And your recollection is that the 22 guidance you received was that the options laid out</p>

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<p style="text-align: right;">Page 182</p> <p>1 in this memo were accepted?</p> <p>2 A. I think in general. Again, in terms of</p> <p>3 whether this was precisely what was presented and</p> <p>4 signed off on without the actual document with</p> <p>5 signature, I'm not sure.</p> <p>6 Q. Where could I get a copy of a signed copy</p> <p>7 of a document -- of this document, whether it be a</p> <p>8 slightly revised version or not?</p> <p>9 A. It probably resides in our records</p> <p>10 somewhere.</p> <p>11 Q. Is there a place where it resides?</p> <p>12 A. There's not a specific folder in a</p> <p>13 specific file cabinet that I know we would find it.</p> <p>14 But I assume there must be a copy of it in our</p> <p>15 records somewhere.</p> <p>16 Q. Are these the kind of decisions that are</p> <p>17 made that are put in the Federal Register?</p> <p>18 A. No. They're not. These are more sort of</p> <p>19 operating policy.</p> <p>20 Q. And do you believe this was a significant</p> <p>21 operating policy?</p> <p>22 MS. MARTINEZ: Objection to form.</p>	<p style="text-align: right;">Page 184</p> <p>1 approach to reviewing them was what the decision</p> <p>2 makers, the policymakers, in the agency, the types</p> <p>3 of guidelines they wanted us to apply.</p> <p>4 Q. Is the other reason that your team wanted</p> <p>5 a ratification of the approaches was because it did</p> <p>6 not necessarily -- it was not necessarily consistent</p> <p>7 with the actual federal regulations governing what</p> <p>8 states should be paying for drugs?</p> <p>9 MS. MARTINEZ: Objection to form.</p> <p>10 A. My answer to that would be no. I don't</p> <p>11 think we saw anything inconsistent with these</p> <p>12 guidelines with the regulations. It was a way of</p> <p>13 evaluating the state plans, amendments, that we were</p> <p>14 receiving to determine whether they were in</p> <p>15 general -- if they were in compliance with the</p> <p>16 regulatory standard.</p> <p>17 Q. Let's take a look at the memo. The first</p> <p>18 paragraph states "Although there are no statutory</p> <p>19 provisions for payment rates for Medicaid drugs,</p> <p>20 states are required to set rates in accordance with</p> <p>21 regulations at 42 C.F.R. 447.301-.333." Those are</p> <p>22 the regulations you alluded to earlier today,</p>
<p style="text-align: right;">Page 183</p> <p>1 A. Yeah. I honestly don't know what you</p> <p>2 mean by significant. I mean, it was important in</p> <p>3 the sense that sort of things were changing in terms</p> <p>4 of our knowledge of pharmacy pricing and we were</p> <p>5 seeing more state plan amendments. So we felt we</p> <p>6 needed some guidance. I don't think it's</p> <p>7 particularly profound. I think it's really -- you</p> <p>8 know, there were some approaches that we thought</p> <p>9 were reasonable we wanted to have ratified by higher</p> <p>10 authority before we proceeded to apply these</p> <p>11 approaches.</p> <p>12 Q. And why did you want to have them</p> <p>13 ratified?</p> <p>14 A. Because there was significant interest in</p> <p>15 pharmacy pricing. There was sort of the general</p> <p>16 sense that states were paying more than they should</p> <p>17 be for drugs. And we wanted to encourage states as</p> <p>18 we did with sending out the IG reports to take</p> <p>19 another look at how they were reimbursing for drugs.</p> <p>20 So we were encouraging them to consider</p> <p>21 changing their payments. But when they did we had</p> <p>22 to review them. And we needed to make sure that our</p>	<p style="text-align: right;">Page 185</p> <p>1 correct?</p> <p>2 A. Yes, that's correct.</p> <p>3 Q. And you agree that there are no statutory</p> <p>4 provisions that govern what state Medicaid programs</p> <p>5 can pay for drugs?</p> <p>6 A. There is a general statutory provision</p> <p>7 about the economy and efficiency of the state</p> <p>8 Medicaid program and that the state programs needed</p> <p>9 to provide for the program to be run in that manner.</p> <p>10 But there are no statutory provisions specific to</p> <p>11 how drugs should be paid for.</p> <p>12 Q. Under the background section the first --</p> <p>13 there's a section that states "Estimated acquisition</p> <p>14 cost, EAC and dispensing fee." The second sentence</p> <p>15 says "The first is EAC, which simply means the cost</p> <p>16 to the pharmacy of obtaining the drug," correct?</p> <p>17 A. Yes. That's what it says.</p> <p>18 Q. And then it says a couple paragraphs</p> <p>19 down, the ingredient cost is defined in 42 C.F.R.</p> <p>20 447.301 as the "state agency's best estimate of the</p> <p>21 price generally and currently paid by providers for</p> <p>22 a drug marketed or sold by a particular manufacturer</p>

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<p style="text-align: right;">Page 186</p> <p>1 or labeler in the package size most frequently 2 purchased by providers," correct? 3 A. Yes. That's what it says. 4 Q. And then there's a section that talks 5 about Office of Inspector General reports that have 6 been submitted to state audits. Do you see that? 7 A. Of the last paragraph? 8 Q. Yes. 9 A. Yes. 10 Q. And it talks about one report showing 11 that the actual acquisition cost for brand name 12 drugs nationally is an average of AWP less 21.84 13 percent, right? 14 A. Yes. 15 Q. And it also refers to the last sentence 16 carrying over to the next page to a report on 17 generic drugs showing the actual acquisition cost 18 nationally to be an average of AWP less 65.93 19 percent, correct? 20 A. Yes, correct. 21 Q. And then there's a section that talks 22 about analysis where it says "In recent months there</p>	<p style="text-align: right;">Page 188</p> <p>1 negotiations that occur between the state and 2 pharmacy representatives after the survey results 3 are known. In other cases the states' legislature 4 have responded to the escalating cost of Medicaid 5 drugs by enacting legislation that increases the 6 discount in the ingredient cost or the dispensing 7 fee of these drugs. Legislation usually does not 8 address why these rates are the best estimates or 9 are reasonable." 10 Ms. Duzor, is that statement consistent 11 with your general understanding at the time? 12 MR. WINGET-HERNANDEZ: Objection to form. 13 MS. MARTINEZ: Objection to form. 14 A. Certainly yes concerning state 15 legislation. I'm not sure I understand what this 16 sentence means when it talks about negotiations that 17 occur between state and pharmacy representatives. I 18 don't know if that means between the state Medicaid 19 agency or other entities in the state and pharmacy 20 representatives. Certainly reductions in payments 21 in Medicaid in states is quite frequently a 22 political issue.</p>
<p style="text-align: right;">Page 187</p> <p>1 has been an increase in SPAs proposing to change the 2 reimbursement methodology. A listing these SPAs is 3 attached. Where there are surveys of costs the 4 findings generally show that these states' 5 reimbursements could have been reduced by a 6 percentage greater than the proposed AWP discount 7 levels." 8 Is that consistent with your recollection 9 of the facts around this time frame? 10 A. I don't recall those surveys. I don't 11 know whether -- they could have occurred before I 12 came. But I don't recall the surveys. 13 Q. Do you recall that state plan amendments 14 were proposing a discount off of AWP that was 15 significantly less than OIG's findings? 16 MR. BATES: Object to the form. 17 A. Yes. And most states were not 18 differentiated between generic and innovator 19 products. They were proposing a discount of AWP 20 across the board. 21 Q. And the next sentence says "The lesser 22 level of discount is generally the result of</p>	<p style="text-align: right;">Page 189</p> <p>1 Q. And you had become aware -- you have been 2 aware in your roughly six years on the job doing 3 this pharmacy stuff that the states often 4 negotiation the level of discount from AWP with 5 pharmacist providers in the states? 6 MS. POLLACK: Objection to the form. 7 MS. MARTINEZ: Objection. 8 MR. BATES: Objection to form. 9 A. The reimbursement rates in many states is 10 set in state legislation. And certainly my 11 understanding is that the pharmacies and their 12 representative groups are quite active in trying to 13 protect the interest of pharmacies with state 14 legislative bodies in terms of reimbursement rates. 15 Q. But what if the state legislation -- that 16 the rate established by the state legislatures is 17 not the state's best estimate of the price generally 18 and currently paid by providers? What happens in 19 that case? 20 MS. MARTINEZ: Objection to form. 21 A. Well, I think that was part of the 22 dilemma here because we were seeing that state</p>

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<p style="text-align: right;">Page 190</p> <p>1 legislatures were talking up the issue of pharmacy 2 reimbursement. And we commonly did not have 3 documentation as to what their reasoning was in 4 picking a particular figure or rate. 5 So we were getting state plan amendments 6 that would say we'd like to go to AWP minus 13 7 without any solid documentation that that did -- 8 that that was a good estimate of acquisition cost. 9 And yet it was determined by the elected body, you 10 know, of the people of the state. So that gave it 11 some legitimacy. 12 Q. And CMS had every reason to believe that 13 a reimbursement methodology like AWP minus 13 would 14 not result in a payment by the state for generic 15 drugs that was the price generally and currently 16 paid by providers; isn't that right? 17 MR. WINGET-HERNANDEZ: Objection to form. 18 MS. MARTINEZ: Objection to form. 19 A. Could you state that again? 20 Q. Sure. CMS had every reason to believe 21 that a reimbursement methodology like AWP minus 13 22 percent would not result in a payment by a state for</p>	<p style="text-align: right;">Page 192</p> <p>1 A. We knew that for generic drugs that AWP 2 minus 13 was a generous payment based upon the IG's 3 findings. 4 Q. OIG had found on a national level that 5 generic drugs were selling at AWP minus 66 percent? 6 A. Based on their sample, that's what they 7 showed. 8 Q. And did you have any reason to believe 9 that sample was not representative of the price the 10 generic drugs were generally selling in the 11 marketplace? 12 MR. BATES: Object to the form. 13 A. I didn't know enough about their sample. 14 I certainly again would not say that their 15 conclusion was the right answer for all generic 16 drugs. Most states were doing AWP minus across the 17 board not differentiating between generic and 18 non-generic. So they were not giving us the state 19 plan amendments that we could align neatly with the 20 OIG report. They were proposing it in a different 21 way. 22 Q. And do you recall having discussions</p>
<p style="text-align: right;">Page 191</p> <p>1 generic drugs that was the price generally and 2 currently paid by providers; isn't that right? 3 MS. MARTINEZ: Objection to form. 4 A. I'm sorry. I'm still having trouble with 5 the question. 6 Q. I'll try it again. CMS had every reason 7 to believe that a reimbursement methodology like AWP 8 minus 13 percent would not result in a payment by a 9 state for generic drugs that was the price generally 10 and currently paid by providers; isn't that right? 11 MS. MARTINEZ: Objection to form. 12 A. Okay. So can I restate the question to 13 see if I understand it? 14 Q. Okay. 15 A. That CMS could have concluded that AWP 16 minus 13 was not a good estimate of estimated 17 acquisition cost? Is that what you're saying? Is 18 that what you're asking? 19 Q. What did you believe on a national level 20 was the rate of discounts from AWP for generic 21 drugs? 22 MS. MARTINEZ: Objection to form.</p>	<p style="text-align: right;">Page 193</p> <p>1 about that problem at CMS about the need to 2 differentiate between -- about the need to have a 3 reimbursement methodology that was different for 4 brand name drugs than for generic drugs? 5 A. We didn't have a role or a policy that 6 states had to do that. That was an approach they 7 could have followed and that was suggested by the 8 inspector general's reports. But it wasn't an 9 agency policy that states should be doing that. 10 They could do a blended average. That was not -- it 11 was not inconsistent with anything we had said. 12 Q. Did you have any reason to believe that a 13 reimbursement methodology like AWP minus 10, AWP 14 minus 15 percent, could serve as a best estimate of 15 the blended average at which generic and branded 16 drugs were selling in the marketplace? 17 MS. MARTINEZ: Objection to form. 18 A. To my knowledge we never did the analysis 19 that would really be necessary to come to that 20 conclusion. 21 Q. If you would go to the next paragraph on 22 Exhibit Abbott 328, it states "It is proving</p>

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<p style="text-align: right;">Page 194</p> <p>1 increasingly difficult to require the states to</p> <p>2 establish payment rates in adherence to regulatory</p> <p>3 requirements." Do you see that?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Do you know what that means?</p> <p>6 A. No. And I think my difficulty is that --</p> <p>7 the idea of increasingly difficult, I wasn't there</p> <p>8 at the prior point in time to have an appreciation</p> <p>9 of how it had been before I arrived.</p> <p>10 Q. Do you know what the regulatory</p> <p>11 requirements were that are being referred to here?</p> <p>12 A. I believe they would be the regulatory</p> <p>13 requirements related to estimated acquisition cost.</p> <p>14 Q. And what the authors of this document are</p> <p>15 saying is that it's becoming difficult to require</p> <p>16 states to set payment rates that get to estimated</p> <p>17 acquisition cost, correct?</p> <p>18 MR. WINGET-HERNANDEZ: Objection to form.</p> <p>19 MS. MARTINEZ: Objection, form.</p> <p>20 A. The plain reading of it, yes.</p> <p>21 Q. Oh, is there a hidden meaning that I'm</p> <p>22 not getting?</p>	<p style="text-align: right;">Page 196</p> <p>1 MR. WINGET-HERNANDEZ: Objection it form.</p> <p>2 MR. BATES: Objection to form.</p> <p>3 MS. MARTINEZ: Objection to form.</p> <p>4 A. I think based on the IG reports, yes, we</p> <p>5 expected that they were. But they were faced with</p> <p>6 difficult choices in terms of reducing their</p> <p>7 payments, which many states were doing, but they</p> <p>8 were doing it in a cautious manner. They didn't</p> <p>9 want to do it in a very precipitous manner because</p> <p>10 of course their pharmacy -- their pharmacist and</p> <p>11 their pharmacy organizations were telling people</p> <p>12 that the sky would be falling in then.</p> <p>13 So I think they were in a difficult</p> <p>14 position to know how much they could reduce their</p> <p>15 rates.</p> <p>16 Q. Do you believe that their actions were</p> <p>17 reasonable?</p> <p>18 MS. MARTINEZ: Objection to form.</p> <p>19 MR. BATES: Objection to form.</p> <p>20 A. I think we thought the direction they</p> <p>21 were going was the proper direction. Whether they</p> <p>22 were being overly cautious or not I think is a hard</p>
<p style="text-align: right;">Page 195</p> <p>1 MR. WINGET-HERNANDEZ: Objection, form.</p> <p>2 A. No. Again, I'm just saying that not</p> <p>3 having the history I don't know the basis of the</p> <p>4 statement saying that it is proving increasingly</p> <p>5 difficult.</p> <p>6 Q. But based on your experience you did</p> <p>7 observe that it was difficult to get states to</p> <p>8 establish payment rates in adherence with the</p> <p>9 estimated acquisition cost, correct?</p> <p>10 MR. BATES: Objection to the form.</p> <p>11 MS. MARTINEZ: Objection to form.</p> <p>12 A. Well, in order to determine estimated</p> <p>13 acquisition cost my understanding of what had been</p> <p>14 done previously was to require states to do surveys</p> <p>15 and get invoices. And I think states were saying</p> <p>16 that that was too difficult, too time consuming, too</p> <p>17 out of date. By the time they did it prices were</p> <p>18 changing. So that states were telling us that they</p> <p>19 couldn't really do that anymore.</p> <p>20 Q. Is it your testimony that you didn't know</p> <p>21 that states were reimbursing drugs at levels higher</p> <p>22 than estimated acquisition cost?</p>	<p style="text-align: right;">Page 197</p> <p>1 judgment at the federal level to make. But, you</p> <p>2 know, I think we thought they were going in the</p> <p>3 right direction.</p> <p>4 Q. What would have happened if overnight all</p> <p>5 the AWP's reported for all drugs were automatically</p> <p>6 turned into real prices?</p> <p>7 MR. WINGET-HERNANDEZ: Objection to form.</p> <p>8 MS. MARTINEZ: Objection to form.</p> <p>9 Q. What would have happened?</p> <p>10 MR. BATES: Objection to form.</p> <p>11 A. I think that a lot of telephones would</p> <p>12 have been ringing all over the country in Medicaid</p> <p>13 offices from pharmacists would be saying -- and they</p> <p>14 do now, when states -- my understanding -- when</p> <p>15 states establish MACs. If a pharmacist can't get</p> <p>16 the drug at the price that they're being reimbursed</p> <p>17 by Medicaid they don't hesitate to call Medicaid and</p> <p>18 say I'm going to come in and show you my invoice.</p> <p>19 Here it is. Here's what I'm paying. I can't take</p> <p>20 reimbursement from you that's less than what it's</p> <p>21 costing me.</p> <p>22 So I think they hear about it from the</p>

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<p style="text-align: right;">Page 198</p> <p>1 pharmacy community. And that's what would have 2 happened.</p> <p>3 MR. TORBORG: We need to take a break and 4 change the tape and might as well take a break at 5 the same time.</p> <p>6 MR. NEAL: Sounds good.</p> <p>7 THE VIDEOGRAPHER: This is the end of 8 tape 4. Off the record at 3:00. 9 (Recess, 3:01-3:24 p.m.)</p> <p>10 THE VIDEOGRAPHER: This is the beginning 11 to have tape 5 in the deposition of Ms. Duzor. On 12 the record at 3:24:15.</p> <p>13 BY MR. TORBORG:</p> <p>14 Q. Welcome back, Ms. Duzor.</p> <p>15 A. Thank you.</p> <p>16 Q. I'd like to ask you to look at Abbott 17 Exhibit 328 again. It's the document we've been 18 looking at. The second page. In particular the 19 second paragraph under analysis. I'd asked you 20 about the first sentence there.</p> <p>21 I wanted to go to the second sentence 22 where it states "Accordingly we believe an analysis</p>	<p style="text-align: right;">Page 200</p> <p>1 MS. MARTINEZ: Objection to form.</p> <p>2 MS. POLLACK: Objection to form.</p> <p>3 A. Well, it says states and pharmacy 4 representatives. Again, I'm not sure if that means 5 state Medicaid agencies or other bodies in the 6 state. I'm just not sure what this means. I'm a 7 little surprised that state Medicaid agencies -- 8 that the phrase or word "negotiation" would be used 9 in connection with the state Medicaid agencies 10 because you generally just don't think of, you know, 11 the executive branch of government negotiating.</p> <p>12 Q. Well, you had been provided -- let me 13 strike that and start over.</p> <p>14 You took part in approving state plans, 15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. And in connection with that effort 18 documentation went back and forth between CMS and 19 state Medicaid officials, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Your name appears on a lot of that 22 documentation, does it not?</p>
<p style="text-align: right;">Page 199</p> <p>1 and acceptance of other factors states are now using 2 to establish payment rates should be considered in 3 looking at the EAC and a dispensing fee." Do you 4 have an understanding of what that means?</p> <p>5 A. I believe what it means is that rather 6 than insisting on a dispensing fee study or an 7 analysis of invoices that we should look at other 8 ways that states were developing their EACs.</p> <p>9 Q. How were other states -- what other 10 factors were states using to establish payment 11 rates?</p> <p>12 MS. MARTINEZ: Objection to form.</p> <p>13 A. As noted in the paragraph above, one was 14 through state legislation.</p> <p>15 Q. Any other factors that -- this refers to 16 factors in plural.</p> <p>17 A. Yeah. Well, it indicates above also that 18 there was this negotiation occurring. But again, as 19 I said before, I'm not really sure who the parties 20 are to those negotiations.</p> <p>21 Q. Do you have a guess as you sit here 22 today?</p>	<p style="text-align: right;">Page 201</p> <p>1 A. Yes, it does.</p> <p>2 Q. And in that documentation, does it not 3 refer to negotiations with pharmacy provider 4 groups --</p> <p>5 MS. MARTINEZ: Objection to form.</p> <p>6 Q. -- or do you just not recall that?</p> <p>7 A. I don't recall that.</p> <p>8 Q. So the factors that you believe this is 9 referring to are the rates set by state legislatures 10 and negotiations with the states and pharmacy 11 representatives, whoever those might be, correct?</p> <p>12 MR. WINGET-HERNANDEZ: Objection to form.</p> <p>13 A. In reading this document, that seems to 14 be what it's saying to me.</p> <p>15 Q. Any other factors?</p> <p>16 MS. MARTINEZ: Objection to form.</p> <p>17 A. No other that seem to be mentioned here 18 or that come to mind.</p> <p>19 Q. Okay. And what does the word "acceptance 20 of other factors" mean in that sentence?</p> <p>21 MS. MARTINEZ: Objection to form.</p> <p>22 A. I believe it means approval of</p>

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<p style="text-align: right;">Page 202</p> <p>1 reimbursement rates based upon states pointing to</p> <p>2 these other factors.</p> <p>3 Q. As opposed to a strict reliance on</p> <p>4 estimated acquisition cost?</p> <p>5 MS. MARTINEZ: Objection to form.</p> <p>6 A. Rather than a strict reliance on pharmacy</p> <p>7 pricing invoices, documentation of prices paid.</p> <p>8 Q. Is it your testimony that this sentence</p> <p>9 refers -- that this sentence does not refer to</p> <p>10 accepting payment levels that are higher than</p> <p>11 estimated acquisition cost?</p> <p>12 MS. MARTINEZ: Objection to form.</p> <p>13 A. I think that we're trying to establish</p> <p>14 other bases for the estimated acquisition cost other</p> <p>15 than looking at actual prices paid.</p> <p>16 Q. So do you believe that the negotiations</p> <p>17 referred to above relate to the actual prices or</p> <p>18 data that would be used to set estimated acquisition</p> <p>19 cost?</p> <p>20 MS. MARTINEZ: Objection to form.</p> <p>21 Q. Is that your testimony?</p> <p>22 A. What I'm saying is that in proposing</p>	<p style="text-align: right;">Page 204</p> <p>1 Q. Of the actual price at which they</p> <p>2 purchased the drugs?</p> <p>3 A. Of the best estimate that the state could</p> <p>4 come up with of acquisition cost.</p> <p>5 Q. And what do you base that belief on, that</p> <p>6 the negotiations with pharmacy providers and the</p> <p>7 states were leading to the best estimate that the</p> <p>8 state agency could come up with for what those</p> <p>9 providers were paying for drugs?</p> <p>10 MR. WINGET-HERNANDEZ: Objection to form.</p> <p>11 A. That there are competing interests</p> <p>12 between the states wanting to pay as low of a price</p> <p>13 as they can pay in order to achieve budget savings,</p> <p>14 the pharmacy certainly -- their interests being in</p> <p>15 the opposite direction -- and that through</p> <p>16 negotiation that was the best the state could do in</p> <p>17 terms of coming up with an estimate of acquisition</p> <p>18 cost that they would propose in a state plan to use.</p> <p>19 Q. The best estimate of the actual cost or</p> <p>20 the best payment rate that they thought they could</p> <p>21 keep to keep providers in the system?</p> <p>22 MR. BATES: Objection as to form.</p>
<p style="text-align: right;">Page 203</p> <p>1 state plan amendments states do it through a variety</p> <p>2 of means. And some of them -- one of them could be</p> <p>3 legislation, one of them this memo is saying could</p> <p>4 be with negotiations, that -- I believe what that</p> <p>5 means is that a state may say we're thinking about</p> <p>6 putting a state plan amendment that says for</p> <p>7 generics it will be AWP minus 65.</p> <p>8 And the pharmacy groups say you can't do</p> <p>9 that, you'll put me out of business, and so there is</p> <p>10 some negotiation there. And that we would accept</p> <p>11 that negotiation as being sort of -- you know, a</p> <p>12 reasonable estimate or the best estimate we could</p> <p>13 get of acquisition cost.</p> <p>14 Q. Did you believe that the negotiations</p> <p>15 between pharmacy providers and states were providing</p> <p>16 the best estimate of the price at which those</p> <p>17 providers were currently and generally paying for</p> <p>18 those drugs?</p> <p>19 MR. WINGET-HERNANDEZ: Objection to form.</p> <p>20 MS. MARTINEZ: Objection to form.</p> <p>21 A. I think we're saying that it was</p> <p>22 reasonable to accept that as a reasonable proxy.</p>	<p style="text-align: right;">Page 205</p> <p>1 MR. WINGET-HERNANDEZ: Objection to form.</p> <p>2 MS. MARTINEZ: Objection to form.</p> <p>3 A. I think ideally you want those two</p> <p>4 numbers to come very close to each other or even</p> <p>5 though blend into one. So I think that's what</p> <p>6 states were trying to accomplish. It was very hard</p> <p>7 for us to judge. And I think we were acknowledging</p> <p>8 that it would always be hard for us to judge whether</p> <p>9 those negotiations resulted in that best price or</p> <p>10 not.</p> <p>11 But it was the best approximation, the</p> <p>12 best estimate. It was something that we wanted to</p> <p>13 be able to use as a basis for accepting the state's</p> <p>14 proposal and approving their state plan.</p> <p>15 Q. I asked you earlier for your opinion on</p> <p>16 what would have happened if all of the average</p> <p>17 wholesale prices or a significant portion of them</p> <p>18 had changed overnight to be the actual average price</p> <p>19 at which providers purchased drugs from wholesalers.</p> <p>20 A. Yes.</p> <p>21 Q. And you provided a response to that,</p> <p>22 correct?</p>

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<p style="text-align: right;">Page 206</p> <p>1 A. Yes.</p> <p>2 Q. Have you discussed that issue ever at</p> <p>3 CMS?</p> <p>4 A. I recall talking to states about their</p> <p>5 state MACs and states saying that what happens</p> <p>6 within a state when they set a state MAC that they</p> <p>7 subsequently decide is too low, that the way they</p> <p>8 find out about that is that the pharmacy providers</p> <p>9 are very quick to call and to demonstrate to the</p> <p>10 state that they can't obtain the drug for that</p> <p>11 price. That that is the -- that that is the</p> <p>12 behavior of pharmacies when they're in that</p> <p>13 situation.</p> <p>14 Q. Did you discuss it with your colleagues</p> <p>15 at CMS?</p> <p>16 A. I don't recall discussing it with</p> <p>17 anybody.</p> <p>18 Q. Now, you've testified earlier that the</p> <p>19 options set forth in this document you believe were</p> <p>20 ratified by someone above the chain; is that right?</p> <p>21 A. Yes. I believe we got the go ahead to</p> <p>22 proceed with these -- evaluating state plans using</p>	<p style="text-align: right;">Page 208</p> <p>1 understand your last statement.</p> <p>2 MR. KELLEY: Yeah. Procedures of a</p> <p>3 similar nature, I didn't understand what you meant.</p> <p>4 MR. MERKL: The procedure outlined in the</p> <p>5 document he's talking about.</p> <p>6 MR. KELLEY: Oh, okay.</p> <p>7 MR. GORTNER: The Roxane defendants join</p> <p>8 that request.</p> <p>9 MS. MARTINEZ: I don't know that such</p> <p>10 thing exists.</p> <p>11 MR. MERKL: Then we won't have an</p> <p>12 argument.</p> <p>13 BY MR. COOK:</p> <p>14 Q. And the decision that would be made as</p> <p>15 reflected in this document and as we've discussed,</p> <p>16 that would be something that would affect the amount</p> <p>17 that states reimburse for drugs; is that right?</p> <p>18 MS. MARTINEZ: Objection to form.</p> <p>19 A. States would be reluctant to reimburse</p> <p>20 for drugs at any amount higher than what the federal</p> <p>21 government would fully match. So yes. If we didn't</p> <p>22 approve their state plan it's unlikely, I think,</p>
<p style="text-align: right;">Page 207</p> <p>1 these factors.</p> <p>2 Q. And that would be a decision that was</p> <p>3 made within CMS, right?</p> <p>4 A. Yes.</p> <p>5 Q. And would that decision be published</p> <p>6 anywhere? I asked you earlier if it would be</p> <p>7 published in the Federal Register. But would it be</p> <p>8 published anywhere?</p> <p>9 A. No.</p> <p>10 MR. COOK: I'd like to ask for a</p> <p>11 production of the final signed copy of this document</p> <p>12 to the extent it exists. I have not seen it. If it</p> <p>13 exists --</p> <p>14 MS. MARTINEZ: My understanding is that</p> <p>15 the agency is going to assert privilege over it due</p> <p>16 to ongoing decision-making. But we can discuss</p> <p>17 that. I mean, we don't have to take up Ms. Duzor's</p> <p>18 time.</p> <p>19 MR. MERKL: Okay. We join the request as</p> <p>20 well. We would also request all prior procedures</p> <p>21 and subsequent procedures of a similar nature.</p> <p>22 MS. MARTINEZ: I'm sorry. I didn't</p>	<p style="text-align: right;">Page 209</p> <p>1 that states would pay at a higher rate.</p> <p>2 (Exhibit Abbott 373 was</p> <p>3 marked for</p> <p>4 identification.)</p> <p>5 BY MR. TORBORG:</p> <p>6 Q. For the record, what I've marked as</p> <p>7 Exhibit Abbott 373 bears the Bates number HHC</p> <p>8 009-0976. It appears to be an e-mail thread dated</p> <p>9 June 3rd 2002 involving Larry Reid, Pamela Carson</p> <p>10 and Kimberly Howell. I ask you to look at that</p> <p>11 e-mail, Ms. Duzor.</p> <p>12 MS. MARTINEZ: What's the number of that</p> <p>13 exhibit?</p> <p>14 MR. TORBORG: Exhibit Abbott 373.</p> <p>15 A. (Reading.) Okay. I've read it.</p> <p>16 Q. Do you recall this e-mail?</p> <p>17 A. No, I don't.</p> <p>18 Q. Let me ask you about some names first.</p> <p>19 Pamela Carson, she's identified as the national</p> <p>20 account representative?</p> <p>21 A. Yes.</p> <p>22 Q. What is her position within CMS? What</p>

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